

**HHS-CMS-CMCS**

**April 25, 2023**

**2:00 pm CT**

Coordinator: Welcome and thank you for standing by. At this time, all participants are in a listen-only mode. During the Q&A session if you'd like to ask a question you may press Star 1 on your phone.

Today's call is being recorded. If you have any objections you may disconnect at this time. I would now like to turn the call over to Jackie Glaze. Thank you. You may begin.

Jackie Glaze: Thank you and good afternoon. And welcome everyone to today's All-State call. I'll now turn to Anne Marie Costello, our Deputy Center Director, for opening remarks. Anne Marie?

Anne Marie Costello: Thanks, Jackie, and hi everyone. And welcome to today's All-State call. We're dedicating today's call primarily to responding to your questions on any topic that you might have. But before we jump into those questions, Sarah Spector, from the Children & Adults Health Programs group, will provide a very quick update on the DACA Notice of Proposed Rulemaking that was released yesterday.

I want to flag that we don't have any slides for today, but you can go ahead and submit any questions that you have into the chat at any time during

today's discussion. With that I'm going to hand things over to Sarah Spector.  
Sarah?

Sarah Lichtman Spector: Thanks, Anne Marie. As folks may know yesterday CMS issued a proposed rule to the Federal Register entitled, Clarifying Eligibility for a Qualified Health Plan Through an Exchange in a Basic Health Program and for Some Medicaid and Children's Health Insurance Programs. The proposed rule, if finalized, would modify the definition of lawfully present to include recipients of the Deferred Action for Childhood Arrival Program, or DACA, recipients for the purposes of the Marketplace, the Basic Health Program, or Medicaid and CHIP in states that elect the CHIPRA 214 option to cover lawfully residing children and pregnant individuals.

If this proposed change is finalized DACA recipients would be eligible for Advance Payments of the Premium Tax Credit, APTC, and cost-sharing reduction if they meet all other eligibility requirements. Under this proposed change DACA recipients would be treated the same as other deferred action recipients for the purposes of eligibility for the CMS Insurance Affordability Program. In addition, CMS is proposing in this rule some additional technical modifications to the definition of lawfully present, primarily to help enable CMS, and states, to administer their programs more efficiently for non-citizens.

For Medicaid and CHIP coverage, the CHIPRA 214 option allows states to elect to cover lawfully residing children and pregnant individuals who meet all other eligibility requirements in the state. Currently 34 states, the District of Columbia, and three territories have elected the CHIPRA 214 option to cover lawfully residing children. And 25 states, DC, and three territories have elected to cover the CHIPRA 214 option to cover lawfully residing pregnant

individuals, which allows them to cover lawfully residing individuals without being subject to the five-year waiting period.

If finalized, the proposed rule would provide uninsured DACA recipients with access to these health coverage programs for the very first time. If finalized, CMS estimates that this proposed rule could lead to 129,000 previously uninsured DACA recipients newly enrolling in health coverage through a marketplace, a basic health program or Medicaid or CHIP in a state that elects the CHIPRA 214 option.

The NPRM has a proposed effective date of November 1 of 2023. CMS looks forward to and welcomes public comment on the effective date as well as all parts of the provisions of the proposed rule. The comment period is open through June 23, 2023. And there's also a fact sheet to the rule available on [cms.gov](https://www.cms.gov). So with that I'll turn it back to Jackie.

Jackie Glaze: Thank you, Sarah. So we will use the remainder of our time today to take questions from the states. So we'll begin by using the chat function. So we'll take any questions, anything that you'd like to ask Sarah or anyone else, any questions you may have.

So please start submitting your questions. And then we will follow by taking your questions over the phone line. So we'll take a few minutes and look for your questions.

(Krista): I see one question in the chat just referencing, are we sharing? I think that this might be in reference to the slides. We are not sharing any slides today, but please clarify if you were asking if we were sharing something else.

Jackie Glaze: I'm not seeing any questions either, (Krista), so I'll ask (Ted) to share instructions for registering questions. And if you could please open the phone lines please.

Just check with the operator if you could please open up the lines and provide instructions for how the participants can register their calls. (Krista), can you hear me okay? I'm just making sure.

(Krista): Yes, I can hear okay.

Jackie Glaze: Okay. Okay. Okay.

Woman: So Jackie it looks like we lost our operator. Is that correct?

Jackie Glaze: I think we have. I've...

Woman: So can we...

Jackie Glaze: ...(unintelligible) him a couple times.

Coordinator: I'm standing by. Again, if you would like to ask a question over the phone please press Star 1 and record your name.

(Krista): I'm seeing one question in the chat. "Can you repeat the rule number and provide a link to it?" Sarah, I think that question's for you.

Sarah Lichtman Spector: Yes, this is Sarah Lichtman Spector again. I can definitely provide the rule number. Give me just a moment to just grab it. And I don't know, Jackie, if I send it to you will someone be able to put it in the chat?

Jackie Glaze: We - if you send it to us we can read it out to the audience.

Sarah Lichtman Spector: Great. Okay, so the rule number is, just one second, oh maybe...

Jackie Glaze: While you're looking for that why don't we go through a couple more...

Sarah Lichtman Spector: Yes.

Jackie Glaze: ...questions, and we'll come back.

Sarah Lichtman Spector: Yes, that would be great.

Jackie Glaze: Okay.

Sarah Lichtman Spector: Yes, come back to me.

Jackie Glaze: Okay. Sure.

(Krista): The next question here is, "Will CMS be updating the Verify Lawful Presence Code to account for DACA changes?"

Sarah Lichtman Spector: This is Sarah Lichtman Spector. If we were to finalize the rule, yes, there would be some operationalizing that CMS would endeavor to do that would include any changes needed in the hub to Verify Lawful Presence Service.

(Krista): Thank you, Sarah.

Woman: And sorry I was just confirming what got released was a Notice of Proposed Rulemaking. And so can you say how long the comment period is again?

Sarah Lichtman Spector: Yes, this is Sarah again. So the comment period is until June 23. And then obviously CMS would issue subsequent to that would be in a position of finalizing - still issuing a final rule.

(Krista): Okay. And I see another question here. "Please review the appropriate action when the ex parte review indicates a reduction in coverage or changes in program. A renewal is issued and then there is no response."

Jackie Glaze: Hi. Can you repeat that...

((Crosstalk))

Jackie Glaze: (Unintelligible) read that question? Yes.

(Krista): Sure thing. "Please review the appropriate action when the ex parte review indicates a reduction in coverage or change in program. A renewal is issued and then there is no response."

Woman: I'm not hearing a question there. So I may - maybe that I'm not hearing it correctly, but I think maybe if we - the person could clarify what exactly the question is that might be helpful.

Jackie Glaze: Yes, and the part where the renewal is issued I'm not sure what that means. But I - maybe the question is, if during an ex parte review - maybe I'm not going to try to understand. Maybe if whoever asked the question can rephrase or give us some additional detail that would be helpful.

(Krista): Why don't we open up the phone line and that individual perhaps could ask the question. So we'll ask again, (Ted), if you could provide instructions for registering the questions and then open the phone lines please.

Coordinator: Sure. The phone lines are open for questions. If you would like to ask a question over the phone, please press Star 1 and record your name. To withdraw your question, press Star 2. Thank you. I'm currently showing no phone questions at this time.

Jackie Glaze: Okay, thank you.

(Krista): I'm seeing a few additional questions in the chat.

Jackie Glaze: Okay.

(Krista): "If an ex parte renewal is attempted, and the result would be a termination or reduction in coverage, does the state need to stop the process and wait for a renewal form or contact the client?"

Jackie Glaze: Can you repeat that one more time?

(Krista): Sure. "If an ex parte renewal is attempted, and the result would be a termination or reduction in coverage, does the state need to stop the process and wait for a renewal form or contact the client?"

(Suzette): So I think, I'm not sure what the contact the client is, but so if the state is attempting an ex parte determination, and the individual is not eligible, then the state would send a renewal form.

Woman: And you can't terminate based on an ex parte renewal. But if, it's a little bit more complicated, I think (Suzette) maybe you - I can clarify that - what I think the scenario is, and you can adjust.

So taking them separately, like if it's going to result in termination, you cannot - like the state cannot terminate somebody based on an ex parte process. They must send a renewal form pre-populated, you know, for MAGI beneficiaries and depending on your policy either, you know, blank or pre-populated for non-MAGI.

If the ex parte shows the person remains eligible, but for a category with lesser benefits, you know, the policy is that the state needs to give the individual an opportunity to provide information that demonstrates that they remain eligible for the more robust benefit package in that category. So, (Suzette), do you want to talk through what the operations of that looks like?

(Suzette): Sure. So I think - so then in that scenario state attempts ex parte, an ex parte renewal, the individual would - is no longer eligible in the group that they're in but may be eligible for coverage in a group with lesser coverage than the state would or, you know, not as many protections.

So if it's an adverse - it would be an adverse action the state would send the renewal form to the individual to allow them to adjust to their current income and other eligibility factors. If there is no return of a renewal form, and the individual based on the information the state has would be eligible in another eligibility group, the state should move them to that eligibility group. And send a notice clearly identifying for the individual the information they used to - well that would have already been on the renewal notice maybe, but letting them know that they have been moved to another category and what the benefits that they have lost are in that notice.

Woman: Yes, I think that notice, (Suzette), would need to say the information they relied on because that last notice that gets sent saying, you know, you - that telling the beneficiary they've been moved to the category with less benefits needs to give the information that the state relied on so the person knows whether, you know, and the basis for the moving so the transition, so that the person has, you know, an opportunity to appeal.

(Krista): And we have one follow-up question in here. "Would that be considered a passive ex parte or a non-passive renewal for the purposes of reporting?"

(Shannon): So, this is (Shannon), maybe I can jump in. I mean, if the individual is sent a renewal form generally speaking that gets categorized in the unwinding data as a renewal that required a renewal form.

Jackie Glaze: All right, (Jen), do we need to take back so that the renewal form doesn't get returned, and the person is retained in another eligibility group. Like, what...

(Jen): Yes.

Jackie Glaze: ...it said...

(Jen): We could take that...

Jackie Glaze: ...we should take it back maybe and talk about what's better so that everybody's doing it consistently.

(Jen): Yes.

Jackie Glaze: I see arguments for either side. So we'll take that last question back. It's a good one. Thanks.

(Krista): And, Sarah, I believe that you have a number to share on the DACA rule.

Sarah Lichtman Spector: That's right. This is Sarah Lichtman Spector again. The proposed rule number is CMS-9894-P, like Paul like proposed. And we can see from the notification on the Office of Federal Register Web site that it's set to be issued in the Federal Register tomorrow on 4-26.

(Krista): Great. There was one additional follow-up question about DACA. "Sorry I was late but can you clarify whether this new rule, once final, requires state Medicaid programs to cover the DACA population or is it an optional population?" There is a second question here around the date, but I think that you just went over that.

Sarah Lichtman Spector: Sure. So the proposed rule proposes to make changes to the definition of lawfully present. And that is a standard for eligibility in Medicaid and CHIP only for states that have elected to cover the CHIPRA 214 option, which is the option to cover lawfully residing children or pregnant individuals. So for states that have elected that option this proposal would be applied to that population that is covered under the CHIPRA 214 option but is limited only to states that have elected that option.

Woman: But just to say another way, Sarah, it's an option for states whether they want to pick (unintelligible) cover through the CHIPRA 214 option to cover lawfully present pregnant women - pregnant individuals and children. Note that there is a maintenance of effort that may apply.

So if you've already covered them I don't, like, you may or may not need to continue that coverage. But once, if you have or once you have adopted that option, then if the rule is finalized, the DACA rule is finalized, you would be required to cover the DACA recipients under that option just as all other lawfully present individual. States can't pick and choose which immigrant categories they want to cover under the CHIPRA 214 option.

(Krista): Thank you.

Jackie Glaze: I think we can move to the phone lines. Are there any other questions, (Krista), that we didn't cover?

(Krista): No other questions in the chat. Thank, you Jackie.

Jackie Glaze: Great Okay. So I think we'll transfer back to the phone lines again. So if you could once again provide instructions for registering their questions and then open the phone lines please.

Coordinator: Yes. I'm currently not showing any phone questions right now, but again, if you would like to ask...

Jackie Glaze: Okay.

Coordinator: ...a question over the phone please press Star 1 and record your name. Thank you.

Jackie Glaze: No additional questions through the phone lines?

Coordinator: I'm showing no questions at this time.

Jackie Glaze: Okay. Okay. And then I'm not seeing any additional questions through the chat function either, so I think we will adjourn early today. So in closing I do want to thank Sarah for her presentation today.

And looking forward, we will send out the topics and the invitations for the next call. If you do have questions before we speak again please feel free to reach out to us, or your state leads or bring your questions to the next call. So we thank you again for joining us, and we hope everyone has a great afternoon. Thank you.

Coordinator: This today's concludes call. Thank you for your participation. You may disconnect at this time.

[End]